

IT 95-68

Tax Type: INCOME TAX

Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )   Docket No.
OF THE STATE OF ILLINOIS      )   SSN
      v.                      )
XXXXXX,                      )   John E. White,
      Taxpayer                )   Administrative Law Judge
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This case involves XXXXX's transferee liability for Illinois income tax and penalties pursuant to the Illinois Income Tax Act ("IITA"), 35 ILCS 5/905(m), 5/804, 5/1001, and 5/1005. At issue is whether XXXXX ("transferee") has liability due as a transferee of the estate of XXXXX, from whose estate Taxpayer took as one of two heirs at law.

FINDINGS OF FACT:

1. On June 22, 1991, the Illinois Department of Revenue ("Department") issued a Notice of Deficiency ("NOD") to taxpayer as a transferee of the estate of XXXXX, for tax, penalties and interest based on income received by XXXXX during tax years 1984, 1985 and 1986. See NOD, and attachments thereto, attached hereto as Dept. File Ex. No. 1.

2. Transferee filed a Protest to the Department's NOD. See Protest, and attachments thereto, attached hereto as Dept. File Ex. No. 2.

3. XXXXX died on 1/3/89. His estate was administered by the public administrator office in Chicago, and was closed in 11/90. See Auditor's Explanation of Items, attached hereto as Dept. File Ex. No. 3, at 1.

4. On 4/17/89, an amended IL-1040 return was filed by XXXXX's estate for 1984, which reported changes in XXXXX's adjusted gross income following an IRS audit in 1988. Id. The Department corrected that amended return.

See EDA-24, tax year ending 1984, hereinafter referred to as Dept. File Ex. No. 4. The Department proposed penalties pursuant to 804 and 1001 for 1984. Dept. File Ex. Nos. 3 & 4.

5. No original return was filed on XXXXX's behalf for 1985. Dept. File Ex. No. 3, at 2. The Department proposed penalties pursuant to 804 and 1001 for 1985. Dept. File Ex. No. 3; EDA-24, tax year ending 1985, hereinafter referred to as Dept. File Ex. No. 5.

6. On 4/17/89, an amended IL-1040 return was filed by XXXXX's estate for 1986 to report changes resulting from an IRS examination conducted in 1989. Dept. File Ex. No. 3 at 2; EDA-24, tax year ending 1986, hereinafter referred to as Dept. File Ex. No. 6. No original return was filed on XXXXX's behalf for 1986. Dept. File Ex. No. 3 at 2. The Department proposed penalties pursuant to 804, 1001 and 1005 for 1986. Dept. File Ex. Nos. 3 & 6.

7. Taxpayer did not request a hearing. Dept. File Ex. No. 2.

CONCLUSIONS OF LAW: A Notice of Deficiency is prima facie evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a); 5/914. Taxpayer does not object to the basis of the assessment. Rather, she protests that it was the obligation of the Public Administrator to file returns on behalf of XXXXX, and to pay the taxes due based on those returns.

Section 1405 of the IITA provides as follows:

The liability of a transferee of property of a taxpayer for any tax, penalty and interest due the Department under this Act, shall be assessed, paid and collected in the same manner and subject to the same provisions as in the case of the tax to which the liability relates, except that the period of limitations for the issuance of a notice of deficiency with respect to such liability shall be as provided in Section 905(m). The term "transferee" includes donee, heir, legatee and distributee and bulk purchasers under Section 902(d).

5 ILCS 5/1405.

The statute is clear that the Department is authorized to issue an NOD

against transferee here. In *Shimko v. Commissioner*, 31 T.C.M. (CCH) 268 (March 9, 1972), a case with facts almost identical to those presented here, the Tax Court allowed tax and interest to be assessed against a transferee/heir where the public administrator's office failed to pay all taxes for a decedent's estate before closing the estate. I conclude, therefore, that the errors of the public administrator do not preclude the Department from assessing the tax proposed in the NOD issued against transferee. Since transferee failed to present any evidence to rebut the prima facie case of the Department, transferee is liable for the tax proposed in the NOD.

In addition, the NOD proposed the assessment of penalties for failure to pay estimated tax, 35 ILCS 5/804, failure to file returns, 35 ILCS 5/1001, and failure to pay the entire tax liability by the due date, 35 ILCS 5/1005. Penalties imposed under sections 1001 and 1005, however, shall not apply if a taxpayer's failure was due to reasonable cause. The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis. See *Rorabaugh v. United States*, 611 F.2d 211 (7th Cir. 1979); *Dumont Ventilation Co. v. Dept. of Revenue*, 99 Ill. App. 3d 263 (3d Dist. 1987).

With regard to penalties proposed in this matter, the fundamental issue is whether the reasonable cause bases available to XXXXX bind transferee, or whether XXXXX may assert independent reasonable cause bases to challenge the penalties proposed against her as a transferee. After reviewing the types of transferees named in section 1405, I conclude that the legislature intended transferees to be able to assert their own reasonable cause bases to challenge penalties assessed against the transferor.¹

Here, transferee is not a resident of the United States. There is no evidence indicating that she had personal knowledge of XXXXX's tax

liability, his duty to file Illinois income tax returns, or to make estimated tax payments. Based primarily on the unique facts presented here, I conclude that reasonable cause exists to abate the penalties proposed against this taxpayer pursuant to sections 1001 and 1005 of the IITA. For tax years ending prior to December 31, 1987, however, the legislature provided no means by which a taxpayer or a transferee could seek to abate, based on reasonable cause, penalties imposed pursuant to section 804 of the IITA. Compare Ill.Rev.Stat. ch. 120, 8-804 (1983) with P.A. 85-731, approved Sept. 22, 1987 (by which amendment the legislature created a statutory basis for determining that, for tax years ending on or after 12/31/87, the "penalty imposed for underpayment of estimated tax . . . not be imposed to the extent that the Director or his designee determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience."). I conclude, therefore, that transferee may not seek to abate the 804 penalties proposed in the NOD.

I recommend that the Director revise the Notice of Deficiency to finalize the amount of tax and penalties proposed pursuant to sections 506 and 804 of the IITA, and to eliminate the penalties proposed pursuant to sections 1001 and 1005 thereof.

Administrative Law Judge

Date Issued

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1. For example, one of the transferees identified in section 1405 is a bulk purchaser. A bulk purchaser's potential tax liability for the bulk seller's tax liability is limited to the reasonable value of the property acquired by the transferee. 35 ILCS 5/902(d)(1992) (formerly Ill.Rev.Stat. ch. 120, 902(d)(1985)). That limit on a bulk purchaser's liability strongly suggests that the legislature did not intend to preclude transferees from asserting their own challenges to the assessment of penalties which may otherwise be assessed against the transferring taxpayer.